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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 WELLS FARGO BANK, N.A.,  
8 FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

9 Plaintiff,

10 v.

11 CHESTNUT BLUFFS AVENUE TRUST, and  
12 NEVADA ASSOCIATION SERVICES, INC.,

13 Defendants.  
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Case No. 2:17-cv-01344-RFB-VCF

**ORDER**

15 **I. INTRODUCTION**

16 Before the Court is Plaintiffs Federal National Mortgage Association (“Fannie Mae”) and  
17 Wells Fargo Bank, N.A.’s (“Wells Fargo”) Joint Motion for Partial Summary Judgment and  
18 Defendant Chestnut Bluffs Avenue Trust’s (“Chestnut”) Motion to Dismiss. ECF Nos. 36, 38. For  
19 the following reasons, the Court grants Plaintiffs’ Motion and denies Defendant’s motion.  
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21 **II. PROCEDURAL BACKGROUND**

22 Plaintiffs Fannie Mae and Well Fargo filed their complaint against Defendants Chestnut  
23 Bluffs Avenue Trust, Nevada Association Services, Inc., (“NAS”) and Copper Ridge Community  
24 Association (the “HOA”) on May 11, 2017. ECF No. 1. The complaint sought a declaration that  
25 Plaintiffs’ deed of trust survived a nonjudicial foreclosure sale on a Las Vegas property conducted  
26 under Chapter 116 of the Nevada Revised Statutes (“NRS”). To that end, the complaint asserted  
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1 causes of action for declaratory relief, quiet title, due process violations, wrongful foreclosure,  
2 statutory violations of NRS 116, and unjust enrichment. Id. The HOA filed its answer on  
3 September 7, 2017. ECF No. 25. On June 4, 2018, the Court so-ordered Wells Fargo’s stipulation  
4 to dismiss its claims with prejudice against the HOA. ECF No. 31. Chestnut filed its answer on  
5 June 11, 2018. ECF No. 32. On September 14, 2018, Plaintiffs filed a motion for summary  
6 judgment. ECF No. 36. The motion was fully briefed. ECF Nos. 37, 44. Chestnut filed a motion  
7 to dismiss on October 25, 2018. ECF No. 38. That motion was also fully briefed. ECF Nos. 43,  
8 45. On July 10, 2019, the Federal Finance Housing Agency (“FHFA”) filed an amicus brief in  
9 support of Plaintiffs. ECF No. 49.  
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### 11 12 **III. FACTUAL BACKGROUND**

13 Plaintiffs allege the following facts.<sup>1</sup>

#### 14 **a. Alleged Facts**

15 This matter concerns a nonjudicial foreclosure on a property located at 2255 Chestnut  
16 Bluffs Avenue, Henderson, Nevada 89052 (the “property”). The property sits in a community  
17 governed by the HOA. The HOA requires its community members to pay HOA dues.

18 Nonparties Robert and Nancy Fortunato borrowed funds from Ohio Savings Bank to  
19 purchase the property in 2005. To obtain the loan, the Fortunatos executed a promissory note and  
20 a corresponding deed of trust to secure repayment of the note. The deed of trust, which lists the  
21 Fortunatos as the borrowers, Ohio Savings Bank as the lender, and Mortgage Electronic  
22 Registration Systems, Inc. (“MERS”) as the beneficiary of record, was recorded on or about

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25 <sup>1</sup> The Court takes judicial notice of the publicly recorded documents related to the deed of trust and the foreclosure  
26 as well as Fannie Mae’s Single-Family Servicing Guide. Fed. R. Evid. 201 (b), (d); Berezovsky v. Moniz, 869 F.3d  
27 923, 932–33 (9th Cir. 2017) (judicially noticing the Guide); Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir.  
28 2001) (permitting judicial notice of undisputed matters of public record).

1 September 23, 2005. On or about October 3, 2011, an assignment of the deed of trust from MERS  
2 to Wells Fargo was recorded.

3 The Fortunatos fell behind on their HOA payments. From September 2, 2010 through  
4 February 24, 2012, the HOA, through its agent NAS, recorded a notice of delinquent assessment  
5 lien, followed by a notice of default and election to sale, and finally a notice of foreclosure sale  
6 against the property for past-due assessments. On May 11, 2012, Chestnut purchased the property  
7 for \$6,000, as recorded on May 17, 2012.

8 However, Fannie Mae previously purchased the note and the deed of trust in 2005. While  
9 its interest was never recorded under its name, Fannie Mae continued to maintain its ownership of  
10 the note and the deed of trust at the time of the foreclosure. Wells Fargo serviced the note and was  
11 listed as the record beneficiary at the time of the foreclosure sale.

12 The relationship between Fannie Mae and its servicers, is governed by Fannie Mae's  
13 Single-Family Servicing Guide ("the Guide"). The Guide provides that servicers may act as record  
14 beneficiaries for deeds of trust owned by Fannie Mae. It also requires that servicers assign the  
15 deeds of trust to Fannie Mae on Fannie Mae's demand. The Guide states:

16 The servicer ordinarily appears in the land records as the mortgagee to  
17 facilitate performance of the servicer's contractual responsibilities,  
18 including (but not limited to) the receipt of legal notices that may  
19 impact Fannie Mae's lien, such as notices of foreclosure, tax, and other  
20 liens. However, Fannie Mae may take any and all action with respect to the  
21 mortgage loan it deems necessary to protect its ... ownership of the mortgage  
22 loan, including recordation of a mortgage assignment, or its legal  
23 equivalent, from the servicer to Fannie Mae or its designee. In the event  
24 that Fannie Mae determines it necessary to record such an instrument, the  
25 servicer must assist Fannie Mae by [ ] preparing and recording any required  
26 documentation, such as mortgage assignments, powers of attorney, or  
27 affidavits; and [by] providing recordation information for the affected  
28 mortgage loans.

24 The Guide also allows for a temporary transfer of possession of the note when necessary  
25 for servicing activities, including "whenever the servicer, acting in its own name, represents the  
26 interests of Fannie Mae in ... legal proceedings." The temporary transfer is automatic and occurs  
27 at the commencement of the servicer's representation of Fannie Mae. The Guide also includes a  
28 chapter regarding how servicers should manage litigation on behalf of Fannie Mae. But the Guide

1 clarifies that “Fannie Mae is at all times the owner of the mortgage note[.]” Under the Guide, the  
2 servicer must “maintain in the individual mortgage loan file all documents and system records that  
3 preserve Fannie Mae’s ownership interest in the mortgage loan.”

4 Finally, the Guide “permits the servicer that has Fannie Mae’s [limited power of attorney]  
5 to execute certain types of legal documents on Fannie Mae’s behalf.” The legal documents include  
6 full or partial releases or discharges of a mortgage; requests to a trustee for a full or partial  
7 reconveyance or discharge of a deed of trust, modification or extensions of a mortgage or deed of  
8 trust; subordination of the lien of a mortgage or deed of trust, conveyances of a property to certain  
9 entities; and assignments or endorsements of mortgages, deeds of trust, or promissory notes to  
10 certain entities.

11 In 2008, Congress passed the Housing and Economic Recovery Act (“HERA”), 12 U.S.C.  
12 § 4511 *et seq.*, which established the Federal Housing Finance Agency (“FHFA”). HERA gave  
13 FHFA the authority to oversee the government-sponsored enterprises Fannie Mae and the Federal  
14 Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, the “Enterprises”). In  
15 accordance with its authority, FHFA placed the Enterprises, including Fannie Mae, under its  
16 conservatorship in 2008. Neither FHFA nor Fannie Mae consented to the foreclosure extinguishing  
17 Fannie Mae’s interest in the property in this matter.

#### 18 **b. Disputed Facts**

19 The parties the legal effect of the circumstances described above.

### 20 **IV. LEGAL STANDARD**

#### 21 **i. Motion to Dismiss**

22 In order to state a claim upon which relief can be granted, a pleading must contain “a  
23 short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ.  
24 P. 8(a)(2). In ruling on a motion to dismiss for failure to state a claim, “[a]ll well-pleaded  
25 allegations of material fact in the complaint are accepted as true and are construed in the light  
26 most favorable to the non-moving party.” Faulkner v. ADT Security Servs., Inc., 706 F.3d 1017,  
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1 1019 (9th Cir. 2013). To survive a motion to dismiss, a complaint must contain “sufficient factual  
2 matter, accepted as true, to state a claim to relief that is plausible on its face,” meaning that the  
3 court can reasonably infer “that the defendant is liable for the misconduct alleged.” Ashcroft v.  
4 Iqbal, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

## 6 **ii. Summary Judgment**

7 Summary judgment is appropriate when the pleadings, depositions, answers to  
8 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no  
9 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
10 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering  
11 the propriety of summary judgment, the court views all facts and draws all inferences in the light  
12 most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir.  
13 2014). If the movant has carried its burden, the non-moving party “must do more than simply show  
14 that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a  
15 whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine  
16 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation  
17 marks omitted). It is improper for the Court to resolve genuine factual disputes or make credibility  
18 determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th  
19 Cir. 2017) (citations omitted).

## 23 **V. DISCUSSION**

24 The Court finds that the claims in this case may be resolved by answering two questions:  
25 a) whether the Federal Foreclosure Bar under Section 4617(j) applies to claims brought by Fannie  
26 Mae and b) whether Fannie Mae’s claims under Section 4617 to preserve assets of the  
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1 conservatorship or the FHFA are subject to the six-year statute of limitations under Section  
2 4617(b)(12)(A). The Court answers both questions in the affirmative.

3 First, the Court finds that claims by Fannie Mae in this case should be construed as claims  
4 brought by or on behalf of the FHFA as FHFA's agent. Pursuant to HERA, Fannie Mae was  
5 placed into conservatorship by FHFA in 2008. As the Ninth Circuit has explained in the context  
6 of the identically situated Federal Home Loan Mortgage Corporation ("Freddie Mac"), this means  
7 that the FHFA acquired Fannie Mae's "rights, titles, powers, and privileges with respect to its  
8 assets for the life of the conservatorship." Berezovsky v. Moniz, 869 F.3d 923, 927 (9th Cir. 2017)  
9 (internal citations omitted). The foreclosure sale in this case took place at a time that Fannie Mae  
10 was in conservatorship. Fannie Mae's interest in the subject property was therefore an asset of the  
11 FHFA in conservatorship at the time of the foreclosure sale. As the subject property in this case  
12 was an asset of the FHFA, the Federal Foreclosure Bar applies, since the "Federal Foreclosure Bar  
13 applies to any property for which the Agency serves as conservator and immunizes such property  
14 from any foreclosure without Agency consent." Id. Thus, Fannie Mae may assert the application  
15 of the Federal Foreclosure Bar in this case.

16 The Court also finds that the six-year statute of limitations under Section 4617(b)(12)(A)  
17 applies to actions brought by Fannie Mae as an agent of the FHFA and while under its  
18 conservatorship. The relevant portion of the statute is as follows:

19 Notwithstanding any provision of any contract, the applicable statute of  
20 limitations with regard to any action brought by the [Federal Housing Finance]  
21 Agency as conservator or receiver shall be--  
22 (i) in the case of any contract claim, the longer of--  
23 (I) the 6-year period beginning on the date on which the claim accrues; or  
24 (II) the period applicable under State law; and  
25 (ii) in the case of any tort claim, the longer of--  
26 (I) the 3-year period beginning on the date on which the claim accrues; or  
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1 (II) the period applicable under State law.  
2 12 U.S.C. § 4617(b)(12)(A).

3 While the explicit language of this provision only references the “Agency,” the Court’s  
4 statutory analysis does not end there. “In interpreting statutes, a court’s task is to construe  
5 Congress’s intent.” Chubb Custom Ins. Co. v. Space Sys./Loral, Inc., 710 F.3d 946, 958 (9th Cir.  
6 2013). “Whether a statutory term is unambiguous . . . does not turn solely on dictionary definitions  
7 of its component words. Rather, ‘[t]he plainness or ambiguity of statutory language is determined  
8 [not only] by reference to the language itself, [but as well by] the specific context in which that  
9 language is used, and the broader context of the statute as a whole.’” Yates v. United States, 135  
10 S. Ct. 1074, 1081– 82 (2015) (internal citation omitted). The clear intent of Congress in passing  
11 HERA was to be able to provide a mechanism to conserve and beneficially manage the assets of  
12 the FHFA. See 12 U.S.C. § 4617(b)(2)(B)(iv) (noting that FHFA has the power “to preserve and  
13 conserve the assets and property of the [Enterprises]”); see also County of Sonoma v. Fed. Hous.  
14 Fin. Agency, 710 F.3d 987, 993 (9th Cir. 2013) (discussing the scope of FHFA’s powers under  
15 HERA). This is especially true when those assets are under conservatorship—hence, for example,  
16 the creation of the Federal Foreclosure Bar by Congress. Because Fannie Mae operates under the  
17 conservatorship of the FHFA and serves essentially as the FHFA’s agent with respect to the  
18 disposition and sale of FHFA assets in the conservatorship, see 12 U.S.C. § 4617(b)(2)(B), it would  
19 be illogical and contrary to the intent of Congress to construe the statute to mean that actions  
20 brought by the FHFA’s agent Fannie Mae, would be subject to a shorter statute of limitations  
21 period for actions to preserve assets than those where the FHFA is itself the named party. Indeed,  
22 such a construction would serve to dissipate the assets of the FHFA and the conservatorship by  
23 requiring the FHFA to nominally appear separately in each action to preserve its assets along with  
24 Fannie Mae—even though the legal arguments of both entities would be identical. Rather, the  
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1 Court finds that the most reasonable interpretation of the statute consistent with legislative intent  
2 is that Fannie Mae's legal actions while under conservatorship and in cases seeking to preserve  
3 the assets of the FHFA are subject to the federal statute of limitations that applies to "Agency"  
4 actions under Section 4617(b)(12)(A).  
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6 Further, the Court finds that the six-year statute of limitations for contract claims under  
7 Section 4617(b)(12)(A) applies to Fannie Mae's quiet title claim, rather than the shorter three-year  
8 limitations period for tort claims. "If a claim is dependent upon the existence of an underlying  
9 contract, the claim sounds in contract, as opposed to tort." Stanford Ranch, Inc. v. Maryland Cas.  
10 Co., 89 F.3d 618, 625 (9th Cir. 1996). In this case, the quiet title claim is dependent upon the  
11 underlying mortgage lien, which is itself based upon an interest created by a mortgage contract.  
12 The claim is also dependent upon Fannie Mae's underlying deed of trust and the related promissory  
13 note. Thus, the Court will apply the six-year statute of limitations pursuant to Section  
14 4617(b)(12)(A) to Fannie Mae's quiet title claim.<sup>2</sup>  
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16 For statute of limitations calculations, the clock begins on the day the cause of action  
17 accrued. Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). A cause of action accrues "when a suit  
18 may be maintained thereon." Id. In this case, the foreclosure sale was on May 11, 2012. Plaintiffs  
19 filed their complaint on May 11, 2017—exactly five years later. Thus the Court finds that  
20 Plaintiffs' claims are timely filed.  
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24 <sup>2</sup> As the Court has found that these claims should be construed as claims brought by the  
25 FHFA, the Court is required in any case to construe the limitations period in its favor. "To the  
26 extent that a statute is ambiguous in assigning a limitations period for a claim," it "must receive a  
27 strict construction in favor of the Government." Fed. Deposit Ins. Corp. v. Former Officers &  
28 Directors of Metro. Bank, 884 F.2d 1304, 1309 (9th Cir. 1989) (quoting Badaracco v.  
Commissioner, 464 U.S. 386, 391 (1984)).



1           Having found that Plaintiffs' claims are timely filed, the Federal Foreclosure Bar, 46  
2 U.S.C. § 4617(j)(3) thus resolves this matter. The Ninth Circuit has held that the Federal  
3 Foreclosure Bar preempts foreclosures conducted under NRS Chapter 116 from extinguishing a  
4 federal enterprise's property interest while the enterprise is under FHFA's conservatorship unless  
5 FHFA affirmatively consented to the extinguishment of the interest. Berezovksy, 869 F.3d at 927–  
6 31. Under Berezovksy, summary judgment based on the Federal Foreclosure Bar is warranted if  
7 the evidence establishes that the enterprise had an interest in the property at the time of the HOA  
8 foreclosure sale. Id. at 932– 33. The Court finds that the evidence establishes that Fannie Mae had  
9 an interest in the property at the time of the HOA foreclosure sale.  
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11           The Court considers if Plaintiffs provided the proper foundation and sufficient evidence to  
12 show that Fannie Mae acquired a property interest prior to the foreclosure sale. To establish Fannie  
13 Mae's property interest, Plaintiffs attach printouts from Fannie Mae's Servicer and Investor  
14 Reporting ("SIR") electronic database. The printouts are accompanied by a declaration of Graham  
15 Babin, an employee of Fannie Mae. Babin translates the printouts and identifies the Guide. He  
16 also specifically identifies the portions of the printouts that detail the date that Fannie Mae acquired  
17 the note and the deed of trust and that recount the servicing history of the loan.  
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19           Based on the foregoing, the Court grants summary judgment in favor of Plaintiffs and  
20 declares that the Federal Foreclosure Bar prevented the foreclosure sale from extinguishing Fannie  
21 Mae's interest in the property. The Court finds this holding to be decisive as to all claims in this  
22 matter and dismisses the remaining claims as a result.  
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1           **VI. CONCLUSION**

2           **IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Summary Judgment (ECF  
3 No. 36) is granted. The Court declares that Defendant acquired the property subject to Fannie  
4 Mae's deed of trust.  
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6           **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (ECF No. 38) is  
7 denied.  
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9           **IT IS FURTHER ORDERED** that Plaintiff's lis pendens (ECF No. 6) is expunged.

10           **IT IS FURTHER ORDERED** that Plaintiffs' cash deposits of \$500 are returned with  
11 interest, if any, to the Legal Owners named in the respective certificates (ECF Nos. 19, 20).  
12 The Clerk of the Court is instructed to enter judgment accordingly and close the case.  
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14           DATED: September 30, 2019.  
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16           **RICHARD F. BOULWARE, II**  
17           **UNITED STATES DISTRICT JUDGE**  
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